



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,347	11/28/2001	John A. Blake	67333	1967
22242	7590	12/31/2003	EXAMINER	
FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			MAI, TRI M	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 12/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding. 9

Office Action Summary

Application No.

09/996,347

Applicant(s)

BLAKE, JOHN A.

Examiner

Tri M. Mai

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other:

DETAILED ACTION

1. The proposed drawings filed 10/10/03 fails to show the specificity of the folding sequences in Figs. 8-11, especially with portions 46 are folded inward in Fig. 9, prior to the formation of the sleeve.
2. In view of the disapproval of the drawings, the drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the formation for the carton with **each steps** as set forth in claims 17-21 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: 1st-4th panels in claim 8, primary, secondary, and tertiary panels must have proper antecedent basis in the specification.

Claim Rejections - 35 USC § 112

4. Claims 16-21, and 22-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure does not teach the positioning of the secondary side panel adjacent to the primary side panels while the front and side panels substantially coplanar. Regarding claim 22, the original disclosure does not teach the means for limiting interference

Art Unit: 3727

along the length of the side panels. It seems that portion 34 extends only partially along the length of the side panels, but not along the length. This is a new matter rejection.

5. Claims 8-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what are the 1st-4th panels. It seems that the fourth panel is portion 60 ("window formed in a fourth panel", claim 9) and the first is portion 20 ("a window formed in first panel", claim 8, "fourth panel is located opposite the first panel", claim 10). However, these two are not connected. Furthermore, it is further confused by claim 11, "the fifth and six panels disposed opposite the "third and fourth" panels. See objection to the specification above.

It is unclear what is meant by "along the length of the side panels". See 112, 1st rejection above.

Claim Rejections - 35 USC § 102/103

6. Claims 1, 2, 3, 8, 13, 14, 22, 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Guyer et al. (2847153). Guyer teaches a carton having a top panel, a pair of side panels, a front panel, a back panel, a window opening, a pair of side panels 27, and a pair of secondary side panels 50 and 51 substantially the same length as the adjacent one of the side panels. Guyer teaches flaps 42 and 43 are folded to overlie flaps 50 and 51 (col. 3, lines 58) and flaps 42 and 43 are sandwiched between the full panels.

7. Claims 1-3, 13, 14, 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Desmond (3593908), or in the alternative, over Desmond in view of Guyer. Desmond teaches a

Art Unit: 3727

carton having a top panel, a pair of side panels, a front panel, a back panel, a window opening, a pair of side panels 34.

Regarding claim 8, Desmond teaches a first panel 34, a door having a first portion 42, second and third panels 48 and 46, and a forth panel, and a pair of secondary side panels 56 substantially the same length as the adjacent one of the side panels.

Furthermore, it is noted that the container in Desmond can be folded in the intended manner, i.e., portion 56 can be folded after panels 48 and 46, prior to the folding of panels 42 and 34.

Furthermore, it is noted that the term length is arbitrary, and each of the secondary panels in Desmond having a same length, i.e., the length is measured in the shorter dimension.

In the alternative, Guyer teaches that it is known in the art to provide the opening side flaps between the larger flaps. It would have been obvious to one of ordinary skill in the art to provide the opening side flaps 42 between 34 and 56 in Desmond as taught by Guyer to provide added protection.

8. Claims 4-5, 9-12, 15, and 24 as being unpatentable over Guyer in view of either Tanner (1616707), or Adams (Body Smarts). Desmond meets all claimed limitations except for the window opening and display panel. Tanner teaches that it is known in the art to provide a window opening and a display panel for a container. It would have been obvious to one of ordinary skill in the art to provide a window opening and a display panel for a container in Desmond as taught by Tanner to display the contents effectively.

Adams further teaches that it is known in the art to provide a window opening and a display panel for a dispensing container. It would have been obvious to one of ordinary skill in

Art Unit: 3727

the art to provide a window opening and a display panel for the container in Desmond as taught by Adams to display the contents effectively.

9. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guyer in view of Tanner or Adams as set forth above in paragraph 8, and further in view of Carver (1142020). The combination of Guyer meets all claimed limitations except for the tab and a slot. Carver teaches that it is known in the art to provide a tab and a slot for a display panel. It would have been obvious to one of ordinary skill in the art to provide a tab and a slot in the combination of Guyer as taught by Carver to secure the display panel easily.

10. Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Aaron (4602735). Aaron teach a front and primary panels 22, and secondary panels 22a in a substantially coplanar arrangement as shown in Fig. 3, it is noted that in the container the side portions 11 are between panel 22 and 22a in the erected position as claimed.

11. Claims 16-20 are rejected under 35 U.S.C. 102(b) as being unpatentable over Desmond (3593908) in view of Dickerson. Desmond teaches a carton having front and door with side portions, and primary side panels 34 as shown in Fig. 11. Desmond meets all claimed limitations except for the secondary side panels. Dickerson teaches that it is known in the art to provide secondary side panels 18. It would have been obvious to one of ordinary skill in the art to provide secondary side panels in Desmond as taught by Desmond to provide added security.

Regarding the step of aligning the side portions with the primary side panels. Note the side panel 42 aligns with primary panels 34 as shown in Fig. 12 and note that this step occurs in the step of forming a sleeve (col. 2, line 25).

Regarding claim 17, note the tertiary panels 56.

Art Unit: 3727

12. Claim 21 is rejected under 35 U.S.C. 102(b) as being unpatentable over Desmond (3593908) in view of Dickerson, and further in view of either Tanner (1616707), or Adams (Body Smarts). Desmond meets all claimed limitations except for the window opening and display panel. Tanner teaches that it is known in the art to provide a window opening and a display panel for a container. It would have been obvious to one of ordinary skill in the art to provide a window opening and a display panel for a container in Desmond as taught by Tanner to display the contents effectively.

Response to Arguments

13. Applicant's arguments filed 10/10/03 have been fully considered but they are not persuasive. With respect to the Desmond reference, as set forth above, the amended claims do not read over Desmond. It is noted that the various closure flaps can be folded in the manner as claimed. Please note that if the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Furthermore, , it is noted that the term length is arbitrary, and each of the secondary panels in Desmond having a same length, i.e., the length is measured in the shorter dimension.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3727

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

Tri M. Mai
Primary Examiner
Art Unit 3727

